

6 September 1978

MEMORANDUM TO: [REDACTED] OGC

FROM: [REDACTED]

Security Committee Staff

SUBJECT: SCI Denials Working Group - Comments
Concerning Tasking to Prepare SCI
Appeals Procedures.

1. Reference our conversation concerning the SCI Denials Working Group, attached find copies of a DIA memorandum dated 15 August 1978 and my memorandum for the record dated 4 August 1978 which has been revised by Mr. Maynard Anderson of DoD. (See underlining in paragraph 4 - the underlined portions were substituted for language in my original memorandum of that date by [redacted] who felt that my comments did not accurately reflect the DoD position on the matter).

2. It is my understanding that there still has been no resolution of the DoD position in this matter. However, it appears that the DIA recommendation (concurred in by [redacted] [redacted]) will prevail and that no SCI appeals procedure will be included in the DoD Personnel Security Program Regulation.

3. As you will recall, it has been agreed that the SCI Denials Working Group will not submit an alternate proposal until the aforementioned DoD recommendation, as set forth in the DIA memorandum of 15 August 1978, is acted upon. This may take some time. I personally feel that this decision is unfortunate and submit at this time it would be difficult, if not impossible, to overturn.

4. Please contact me after you have reviewed the attachments. I welcome any views that you may have on this matter and look forward to your participation with the group.

On file OSD release instructions apply.

Attachments

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Detailed Comments on Proposed DoD Personnel Security Program Regulation

1. Paragraph 1-302b.

Recommendation: Delete reference to SCI access.

Rationale: Policy affecting the SCI access program can only be enacted by authority of the DCI.

2. Paragraph 1-401

Recommendation: Add to the end of the paragraph: "Knowledge of, or possession of, or access to, classified defense information shall not be afforded to any individual by virtue of his office, position, or security clearance."

Rationale: The importance of restricting dissemination of classified information on the "need-to-know" principle should be emphasized in any security policy document.

3. Paragraph 2-703

Recommendation: Add the following parenthetical comment to line 6 after "...nominee is assigned." - ("clerical personnel are not authorized to conduct pre-SBI screening interviews.")

Rationale: Experience since May 1970 has shown that some requesting agencies have applied an overly liberal interpretation to the Ellsworth Memorandum provisions governing personnel authorized to conduct pre-SBI interviews. Clerical (to include typing) personnel have frequently been utilized to conduct such interviews. The use of untrained personnel to conduct this vital segment of security investigations only serves to lessen, rather than improve, the value of the pre-SBI screening procedure.

4. Paragraph 4-102

Recommendation: Delete parenthetical comment in line 2 of subparagraph a, and b. - "(including....(SCI))."

Rationale: Paragraph 1-601 (i) of EO 12036 states that the DCI shall "...ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information and products." Further, paragraph 1-710 of the same EO tasks senior officials of the Intelligence Community to "protect intelligence and intelligence sources and methods consistent with guidance from

the DCI and National Security Council." Current SCI policy does not make provisions for mutual acceptance of previously certified SCI access. An SCI certifying authority cannot properly carry out his responsibility to protect sensitive sources and methods foreign intelligence information if he is unable to assess the impact the assignment of an individual who has previously been granted an exception to Director of Central Intelligence Directive (DCID 1/14) standards will have on an SCI position under his security cognizance. Each gaining SIO must review all available information relating to an individual's SCI eligibility in order to conform to the provisions of the cited DCID.

5. Paragraph 6-100

Recommendation: Delete lines 8 through 14 of paragraph 6-100

Rationale: It would seem inappropriate to specify estimated investigative lead completion times in a DoD policy document. It could be argued that completion times will increase/decrease in the future.

6. Paragraph 6-104

Recommendation: Add the following parenthetical qualification to the end of the footnote to subparagraph 6-104 b: "(except for SCI access nominations, in which cases the requester will determine the number of additional resubmissions)."

Rationale: DCID 1/14 requires submission of fingerprint charts to the FBI for a search of the criminal files of that agency. No limitation is specified for unclassifiable fingerprint card resubmissions. We have been advised that an ODASD(A) check with Hq FBI confirmed that, unless a fingerprint check is made, no assurance can be given of even a positive identification of the applicant concerned.

7. Paragraph 7-201

Recommendation: Delete paragraph.

Rationale: Inclusion of DIS operational procedures is inappropriate to this document. Except for DIS, these procedures are of little interest to the personnel who will be referring to this Regulation.

8. Paragraph 8-103

Recommendation: Delete sentence 1 of paragraph 8-103.

Rationale: Specification of evaluative factors is already contained in the preceding paragraph. Restatement is repetitious.

9. Paragraph 8-103

Recommendation: Add the following qualification to the end of the final sentence of paragraph 8-103 "(excluding adjudication for eligibility to Sensitive Compartmented Information)."

Rationale: As specified in paragraph 4 above, EO 12036 sets forth the authority of the DCI and, at his delegation, that of the Intelligence Community SIO's, to establish security and access standards for managing SCI material. This includes adjudications policy. It should be noted that the DCI's Security Committee (SECOM) is currently drafting guidelines for adjudication of personnel security cases involving access to SCI.

10. Chapter VIII Section 2

Recommendation: Delete entire Section (paragraph 8-200, -201, and -202) along with Appendix F.

Rationale: The policy enunciated in this section authorizes DIS to adjudicate personnel security cases conducted by that agency and screen out "minor unfavorable information." DIS is an investigative, not an adjudicative agency. The authority to investigate and adjudicate raises the question of potential conflict of interest. Any determination of an individual's loyalty and trustworthiness must be made by the certifying command, not an investigative agency. Such a determination is based on affirmative factors and not just the existence or non-existence of major/minor derogatory information in an individual's background.

11. Paragraph 10-100

Recommendation: Delete parenthetical qualification in line 4: "...(including....access to Sensitive Compartmented Information)."

Rationale: Pertains to SCI Program over which the DCI exercises jurisdiction. See rationale cited in paragraph 4. above.

12. Paragraph 15-104

Recommendation: Delete subparagraph 15-104a.

Rationale: SIO's authorized to render SCI suitability determinations are required under paragraph 17c. of DCID 1/14 to keep security and related files under continuing review. This continuing review program requires immediate availability of all pertinent security information concerning an individual's background. Retention of investigative files by authorized requesters does not violate any statutory prohibitions. Additionally, paragraph 13-100 of this Regulation requires the organizational commander or manager to maintain a program designed to evaluate on a continuing basis, the status of personnel under his jurisdiction with respect to security eligibility. This cannot properly be accomplished unless the activity concerned has all available information.

13. Appendix C., paragraph D.

Recommendation: Add the following qualification to the end of sentence 1 of subparagraph 1.c.: "...or where previous investigative material has not been reviewed by the requesting organization."

Rationale: A Periodic Investigation cannot be properly evaluated in the context of an individual's overall background if the requester has not previously reviewed all available investigative material.

14. Appendix D.

Recommendation: Delete entire appendix.

Rationale: The evaluation of any personnel security case for the purpose of authorizing access to classified information must, in the final analysis, be the result of a common sense determination based on review of all available information pertaining to that case. Beyond this, additional specification of rigid guidelines may result in an inflexible attitude by individual adjudicators and slavish dependence on written guidance. Such a situation would not be conducive to fair and impartial determinations. The general adjudications guidance provided in Chapter VIII of the PSPR is considered sufficient in this respect.

15. Appendix G. Part 2.

Recommendation: The DD Form 398C as proposed in this Appendix does not provide all information necessary for an SCI eligibility determination under paragraph 5 of DCID 1/14. The following changes are required so that the document can be used by the Defense Investigative Service for conducting SBI's for SCI access eligibility:

1. Section 8 should contain a listing of all immediate family members to include those specified under Section 10 of the current SPH.
2. Sections 13 and 14 should be combined under the heading, "Other Relatives and Alien Friends Residing Abroad" (with no reference to specific foreign countries).
3. Section 15 should require listing of schools attended during the last 15 (instead of 5) years.
4. Additionally, Question 2 of Section 20 should be deleted. The question regarding effects of alcohol use as posed, is too subjective for the individual completing the DD398 to accurately answer. This type of information can more properly be elicited by a trained interviewer.

Rationale: DCID 1/14 is the governing national document insofar as access to SCI is concerned.

16. Appendix H

Recommendation: Change paragraph 3 to read:

"Officials.....(SCI):

Director, NSA - for NSA

Director, DIA - for Major DoD Components

SIO's of the Army, Navy, Air Force - for their respective Military Departments

Rationale: Section III of DoD Directive S-5200.17 and Chapter XI of the implementing DoD Directive S-5200.17 (M-2) designate the Director, DIA as the authority responsible for establishing and administering the COMINT security program for the Major Defense Agencies. As part of this authority, he is required to make final evaluations for SI access for those individuals under his security cognizance. In the TK area, Sections I and III of DoD Directive S-5001.2 and Chapter 3 of DoD Directive TS-5001.2 (M-1) establish the authority of the Director, DIA, and charge him with responsibility, as the DoD SIO, for approval of the "must know" determination for access to that category of sensitive intelligence material. These directives, in turn, derive from national directives concerning the SCI program authority of the DCI.